IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

Crl.MC.No. 795 of 2007()

PETITIONER: ACCUSED NO.1 & 2

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1. MANIKANDAN, S/O DEVADATHAN,
KIZHAKKADATH HOUSE,MATHILIL CHERIYIL,
THRIKKADAVOOR VILLAGE, KOLLAM TALUK.

2. RAJENDRAN, S/O NEELAKANDAN,
KANNAMKULANGARA HOUSE, PERUNGUMAM DESOM,
KALAYAPURAM VILLAGE, KOTTARAKKARA TALUK.

BY ADV. SRI.C.C.THOMAS

RESPONDENTS: COMPLAINANT

STATE OF KERALA REPRESENTED BY
EXCISE INSPECTOR, EXCISE RANGE OFFICE,
KOLLAM DISTRICT. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR ADV.SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 20/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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Crl.M.C.No.795 Of 2007

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Dated this the 20th day of June, 2007

ORDER

The learned counsel for the petitioners prays, the learned Public Prosecutor does not oppose the said prayer and I am satisfied that in the light of the decision in **State of Kerala and Others v. Unni** [2007(1) KLT 151 (S.C)], this prosecution in which the only allegation is that the percentage of Ethyl Alcohol in toddy exceeds the permissible figure cannot be sustained.

2. However, report of the Chemical Examiner shows that the starch is found to be positive. There is no allegation raised under section 57 (a) of the Kerala Abkari Act on that score. However, there is an allegation under Section 56(b) of the Kerala Abkari Act. The learned Public Prosecutor submits that in as much as genuine toddy is not expected to contain any amount of starch, the prosecution wants to sustain the allegation under Section 56(b) of the Kerala Abkari Act. I am satisfied that the said allegation can be continued.

3. In the result, this Crl.M.C is allowed in part. The allegation raised under Section 57(a) is quashed as agreed. The proceedings can continue and investigation can be completed in so far as the allegation under Section 56(b) of the Kerala Abkari Act is concerned.

(R.BASANT, JUDGE)

sj